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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/786,732	02/25/2004	James E. Haley	40030-10087	2743
21788	7590	05/14/2007		
RYNDAK & SURI LLP 200 W. MADISON STREET SUITE 2100 CHICAGO, IL 60606			EXAMINER CARTAGENA, MELVIN A	
			ART UNIT 3754	PAPER NUMBER
			MAIL DATE 05/14/2007	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/786,732

Applicant(s)

HALEY, JAMES E.

Examiner

Melvin A. Cartagena

Art Unit

3754

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 08 February 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-21 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-21 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Claim Objections

1. Claim 14 is objected to because of the following informalities: the cap claimed in line 1 of claim 14 appears to be a double inclusion of the cap claimed in claim 1, line 22. Appropriate correction is required.

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 1-8, 10, 11, 14-21 are rejected under 35 U.S.C. 103(a) as being unpatentable over US 2,812,113 to Beall in view of US 3,628,697 to Dowson.

Beall shows a bottle stopper device as seen in Figs. 1-11, having a cylindrical body formed of a flexible material, a lower portion 10 to be inserted into a bottle opening, a circular upper portion 28 adjacent the lower portion and extending above the opening of the bottle and defining a pour opening, an air passage 40 adjacent the lower portion and extending away from the upper portion and substantially encircled by a plurality of dispensing apertures 64", a cap 90 sealing the dispensing and air passages, a visual indicator, seen in Fig. 9 as a level that reads "POUR" with an arrow indicating the pour direction at least 120 degrees from the air passage. Beall also shows a mouth formed by a lip slope about 50 degrees relative to the body.

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Beall shows all claimed features as discussed above except for the spout being anti-drip and the sealing cap being insertable into the upper portion and attached to the upper portion by a strand.

Dowson shows an anti-drip spout as seen in Fig. 6, having a cap 57 with a section 57a insertable into an upper cylindrical upper body 50 and attached to the upper body by a strand 58. It would have been obvious to a person with ordinary skill in the art at the time the invention was made to modify the device of Beall to include a cap insertable and attached to the upper body to prevent dripping outside the container bottle, prevent any product remaining in the spout after use from drying and clogging the spout and prevent misplacing the cap as taught by Dowson.

In reference to method claims 18-21, the Beall-Dowson combination shows a stopper and spout to be used on a container for pouring the content of the container that include the steps of visually determining the proper orientation of the spout and tilting the container in that orientation to pour.

With respect to claim 6, the length the spout extends from the upper portion presents no novel or unexpected result over the length of the spout used in the references. Use of such a dimensions in lieu of those used in the references solves no stated problem and would be an obvious matter of design choice within the skill of the art. *In re Launder*, 42 CCPA 886, 222 F.2d 371, 105 USPQ 446 (1955); *Flour City Architectural Metals v. Alpana Aluminum Products, Inc.*, 454 F. 2d 98, 172 USPQ 341 (8th Cir. 1972); *National Connector Corp. v. Malco Manufacturing Co.*, 392 F.2d 766, 157 USPQ 401 (8th Cir.) cert. denied, 393 U.S. 923, 159 USPQ 799 (1968).

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4. Claim 9 is rejected under 35 U.S.C. 103(a) as being unpatentable over US 2,812,113 to Beall as modify by US 3,628,697 to Dowson as applied to claim 1 above and further in view of US 4,128,189 to Baxter.

The Beall-Dowson combination shows all claimed features as discussed above but is silent about the spout having different colors. Baxter shows a spout and cover of different colors, see column 3, lines 26-31. It would have been obvious to a person with ordinary skill in the art at the time the invention was made to use any various color in combination with an anti-drip spout feature in the device of the Beall-Dowson combination as taught by Baxter in order to fit into a harmonious color style with the remainder of the container including the label on the container.

5. Claims 12 and 13 are rejected under 35 U.S.C. 103(a) as being unpatentable over US 2,812,113 to Beall as modify by US 3,628,697 to Dowson as applied to claim 1 above, and further in view of US 5,228,603 to Pham et al.

The Beall-Dowson combination shows all claimed features as discussed above except for the filter material being of the same material as the spout and a flexible strand at about 120 degrees from the spout. Pham show a spout with a filter material 76 made of the same material as the spout and a flexible strand 312 at about 120 degrees from the spout 305. It would have been obvious to a person with ordinary skill in the art at the time the invention was made to modify the device of the Beall-Dowson combination to include a filter made of the same material as the spout and a stand as taught by Pham to facilitate manufacture of the spout by making the spout and the filter in one molding process and having a strand to prevent misplacing the cap.

Response to Arguments

6. Applicant's arguments with respect to claims 1-21 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

7. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Miller shows a dual seal pour out fitment and closure combination.

8. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

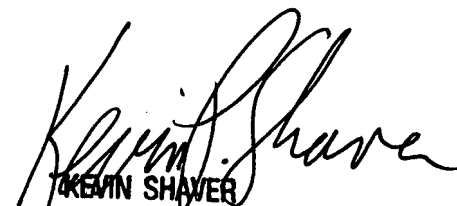
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Melvin A. Cartagena whose telephone number is (571) 272-4924. The examiner can normally be reached on T-F (7:30AM to 6:00 PM).

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kevin P. Shaver can be reached on (571) 272-4720. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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